IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 459 of 1981

For Approval and Signature:
***HONOURABLE* MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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JADIBEN W/O JASHBHAI MOTHIBHAI & 4 - Appellant(s)
Versus
KANUBHAI MAGANBHAI BHIL & 2 - Defendant(s)

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Appearance :
MR HARSHADRAY A DAVE for Mr SN SHELAT for Appellants
NOTICE SERVED for Defendant(s) : 1 - 2.
MS ARCHANA ACHARYA for MR SB VAKIL for Defendant(s) : 3,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
9th October, 2007

ORAL JUDGMENT

This Appeal preferred under Section 110D of the Motor Vehicles Act, 1939 by the claimant arises from the judgment and award dated 10th October, 1980 passed

by the Motor Accident Claims Tribunal, Kheda at Nadiad in Motor Accident Claim Petition No. 34 of 1980.

The claimants are the dependents of deceased Jashbhai Motibhai. On 14th August, 1979, deceased Jashbhai was travelling from Petlad to Khambhat in the offending Truck bearing registration No. GTG-1819. On the way, the driver of the truck lost control and was thrown off the road. The truck turned turtle and landed in a ditch. In the said accident, the aforesaid Jasbhai Motibhai suffered fatal injuries. The claimants – the widow, the minor children and the mother of the said Jasbhai Motibhai filed Claim Petition No. 34 of 1980 in the Motor Accident Claims Tribunal, Kheda for compensation in the sum of Rs. 50,000/=. According to the claimants, the said Jasbhai Motibhai was 23 years old. He was a vegetable vendor. He used to earn around Rs.400/= per month. He maintained the family. The learned Tribunal considering the evidence on record held that in absence of any documentary evidence, the exact income of the deceased could not be assessed. However, as he was a vegetable vendor, his monthly income was

assessed at Rs. 200/= per month, of which a sum of Rs. 75/= would be spent on himself. The dependency benefit was thus worked out at Rs. 125/= per month. The learned Tribunal adopted purchase factor of 15 years and computed the loss of dependency benefit at Rs. 22,500/=. To that, a sum of Rs. 5,000/= was added for loss of expectancy of life. The claimants were thus awarded a sum of Rs. 27,500/=. Feeling aggrieved, the claimants have preferred the present Appeal.

It is not disputed that the deceased Jashbhai Motibhai was travelling on the truck not as a gratuitous passenger but for a hire and reward. The mother of the deceased gave evidence on behalf of the claimants. She deposed that the deceased was maintaining the family and that he was earning around Rs. 400/= per month. In my opinion, there was no reason to disbelieve the said witness. A vegetable vendor, even in the year 1979, would easily earn Rs.10/= per day. The learned Tribunal, therefore, ought to have believed that the deceased earned around Rs. 300/= per month. Calculating two-third of his income as contribution to the family, the

dependency benefit ought to have been taken at Rs. 200/= per month. It is not disputed that the deceased was of 23 years of age. The learned Tribunal, therefore, ought to have adopted a multiplier of 18. The sum of Rs. 5,000/= awarded for loss of expectancy of life is also a bit conservative. I, therefore, hold that the claimants should be awarded a sum of Rs. 10,000/= for loss of expectancy of life.

For the aforesaid reasons, the Appeal is allowed with cost. The Award dated 10th October, 1980 passed by the Motor Accident Claims Tribunal, Kheda at Nadiad in Motor Accident Claim Petition No. 34 of 1980 be modified to the extent that the claimants would be entitled to compensation in the sum of Rs. 53,200/=. However, as the claim is one for Rs. 50,000/=, the award of the Tribunal is modified to the extent that the claimants do recover a sum of Rs. 50,000/= by way of compensation. Rest of the Award in respect of interest, cost and distribution amongst the claimants is confirmed.

{Ms. R.M Doshit, J.}

*Prakash**